

EXHIBIT D

VOLUME I
PAGES: 1 - 86
EXHIBITS: 1 - 14

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11925 NG

GEORGE MICHAEL DOWD,)
Plaintiff,)
v.)
JAMES DOWD,)
Defendant.)

DEPOSITION OF GEORGE MICHAEL DOWD, taken on behalf of the Defendant, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Ariane L. Baker, Certified Shorthand Reporter and Notary Public within and for the Commonwealth of Massachusetts, at Lovins & Metcalf, Ten Cedar Street, Woburn, Massachusetts, on Thursday, December 1, 2005, commencing at 9:53 a.m.

MELVIN LIPMAN
101 Tremont Street
Boston, Massachusetts 02108
617-227-3985

2

APPEARANCES:

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Lovins & Metcalf

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Woburn, Massachusetts 01801

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Counsel on Behalf of the Defendant

DAMON SCARANO, ESQUIRE

Law Office of Damon Scarano

60 Commercial Wharf

Boston, Massachusetts 02110

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Counsel on Behalf of the Plaintiff

ALSO PRESENT:

Karen Dowd

MELVIN LIPMAN 617-227-3985

3

INDEX

WITNESS	DIRECT	CROSS	REDIRECT
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GEORGE MICHAEL DOWD

(By Mr. Lovins) 5

4

EXHIBITS

NO.	DESCRIPTION	PAGE
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1	Notice of Deposition.....	11
2	Suggestion of Death.....	11
3	Motion to Substitute Administrator	
6	and to file Amended Complaint.....	11
4	Photocopy of Business Card -	
8	Notice of Petition for Appointment of	
9	Administrator.....	14
5	Letter dated March 4, 2005 to	
11	Nelson Lovins from Charles A. Katsenes -	
12	Inventory.....	15
6	Administration without Sureties.....	32
7	Bond of Administrator.....	35
8	Voluntary Administration.....	36
9	Standard Certificate of Death.....	38
10	Standard Form - Purchase and Sale	
18	Agreement.....	38
11	Complaint - Plaintiff demands a trial	
20	by jury to all issues at Law & Equity.....	66
12	Answer Counterclaim and Jury Demand.....	69
13	George Michael Dowd's Answer to the	
23	Defendant's Counterclaim.....	75
14	Full and General Release.....	75

MELVIN LIPMAN 617-227-3985

MELVIN LIPMAN 617-227-3985

45

1 He said, Well, you know, can he have -- what
2 do you call money when I croak -- inheritance?

3 I said, Well, let me think about it. So
4 finally I told him -- I said, you know, I'd knock off
5 200,000 for him. He could have the purchase of the
6 house for 450,000. Again, the whole stipulation -- He
7 said to me he always wanted to own this house. I told
8 him -- I said, All right. If you sell the house within
9 two years, you owe me an additional 50,000.

10 When he come out to his figures, he said,
11 Dad, I can't come up with the whole 450,000. He said, I
12 can if I involve -- at the time, it was his girlfriend
13 or fiancée, whatever. He said, if I involve her -- she's
14 got plenty of money -- I can get it. I'd rather do it
15 on my own.

16 I said, All right. I'll loan you the money.
17 So I basically loaned him 30,000, and he come up with
18 420 at passing.

19 Within six months or less, he not only sold
20 the house, but he sold it to Steven Devane, who wanted
21 to buy it from me. And, guaranteed, he's not showing
22 the full amount on paper because I'll guarantee there's
23 a separate loan on there. It's no different than when
24 Steven asked me to hold a separate one. I'm sure, you

MELVIN LIPMAN 617-227-3985

47

1 could have got 650,000, and I was taking it off strictly
2 to do him a favor and help him out. And if he was to
3 sell it -- because he's a very greedy person -- I knew
4 that he was going to make plenty of money on it, so I
5 wanted 50,000 more.

6 Q. So let me ask you this question: With regard
7 to the \$50,000 -- I took some notes while you were
8 talking -- you said that if you, meaning Jim, sell the
9 house in two years, you owe me an additional 50,000?

10 A. That is correct.

11 Q. Is that the entire deal?

12 A. Yes.

13 Q. What if he -- Did you and he ever talk about
14 what would happen if he sold the house for less than
15 what he bought it from you for, plus a figure of -- In
16 other words, suppose he didn't make a \$50,000 profit,
17 how would that have factored into the agreement?

18 A. As a matter of fact, he sold it to the person
19 that wanted to buy it from me at 650,000. I know he
20 made that profit. I also know that person was trying to
21 hide some of the money. So I don't believe it appears
22 on one piece of paper. I believe there's more than one
23 out there.

24 Q. Have you and -- Is it Mr. Devane? Is that

MELVIN LIPMAN 617-227-3985

46

1 know, grabbing records, we could find out.

2 Steven also told me at that time that if I
3 sold to him, I could have kept the garage for two years,
4 which means -- I left an awful lot of tools and stuff in
5 there, over \$20,000 worth. With James buying the house,
6 I thought they were safe, but then he sold it. So I've
7 lost that in addition.

8 Q. Okay. So have you now told me all of the
9 events that led up and relate to the sale of this house?

10 A. Let me see if I left anything out. Well, I
11 think that's the basic bulk of it anyway. Yes.

12 Q. Am I correct, sir -- strike that.

13 Is there any written documentation which
14 reflects this \$30,000 loan?

15 A. No.

16 Q. Is there any written documentation which
17 reflects the arrangement that you are alleging with your
18 son concerning the \$50,000?

19 A. No.

20 Q. Did the arrangement with your son concerning
21 the \$50,000 have anything to do with the price for which
22 he would have sold it or was it strictly a question of
23 the time period within which he was to sell it?

24 A. It had to do with the time period because I

MELVIN LIPMAN 617-227-3985

48

1 his name, Steven Devane? Is that his name?

2 A. Devane or something like that.

3 Q. Devane?

4 A. Yeah.

5 Q. Have you and Mr. Devane had any conversations
6 since the time that he bought the property from your
7 son?

8 A. No.

9 Q. Do you know whether your attorney has had any
10 conversations with him?

11 A. No. Not with Mr. Devane, no.

12 Q. You don't know or he hasn't?

13 A. He hasn't. I don't think he even knows his
14 name.

15 Q. Okay. When did your son tell you that he was
16 \$30,000 short?

17 A. Approximately, three or four days before we
18 passed papers.

19 Q. So are you saying that your agreement with
20 your son was you were to sell the house to him for
21 \$450,000?

22 A. Correct.

23 Q. Okay. Now, you realize, sir, that on
24 Exhibit Number 10, which is the Purchase and Sale

MELVIN LIPMAN 617-227-3985

49

1 Agreement, that that document reflects the sales price
2 of \$420,000; is that right?

3 A. That's correct.

4 Q. Is there some reason why you didn't ask for
5 this document to reflect that it was 450,000 with a
6 reference to a \$30,000 loan?

7 A. Yeah, because he wouldn't have got the loan
8 if they knew that he owed that kind of money. So I told
9 him, All right. It was between he and I. He did not
10 want his girl involved in the sale.

11 Q. Now, you say he would not have gotten the
12 loan. Did he, in fact, get a mortgage for this
13 property?

14 A. At that time, yes, on that 370,000.

15 Q. For the purchase of that property?

16 A. Yes.

17 Q. Do you know who he got the mortgage from?

18 A. No, I don't.

19 Q. Now, you referred to the fact that he didn't
20 want to have his girl involved. What did you mean by
21 that?

22 A. Well, he was living with a lady for over five
23 years. She owns a townhouse that they live in and all
24 that. She has plenty of money. She got hurt in an

MELVIN LIPMAN 617-227-3985

50

1 accident one time. He just didn't want her name on the
2 title.

3 Q. You mean the title of 47 Mallard Way?

4 A. Correct.

5 Q. Well, what did his desire to keep her name
6 off the title -- what did that have to do with the
7 \$30,000 loan?

8 A. Because I agreed to let him owe me the money.
9 He had a house that he and a friend of his, Dave, had
10 been working on to resell. He said he'd pay me the
11 minute they sold that house. They obviously -- Well, I
12 couldn't tell you if they've sold it since, but I'm sure
13 they did.

14 Q. So what does any of that have to do with the
15 fact that he didn't want his girlfriend's name on the
16 title?

17 A. I have no idea.

18 Q. But you did say that. I'm just sort of
19 wondering --

20 A. I'm telling you what he told me. He wanted
21 the title in his name cleared, not his girl's.

22 Q. You didn't understand what relationship that
23 had to do with anything?

24 A. Let me tell you, James is the type that

MELVIN LIPMAN 617-227-3985

51

1 doesn't have a relationship with anybody but himself.

2 Q. Going back to the agreement that you made
3 with James about the sale within a two-year period, your
4 deal was that you were going to sell it to him for
5 \$450,000, correct?

6 A. After I gave him the 200,000 off, yes.

7 Q. Okay. And then you say that you told him
8 that if he sold it in two years, you wanted a \$50,000 --
9 you wanted \$50,000?

10 A. Correct.

11 Q. Okay. But is it correct, sir, that you and
12 he never talked about what would happen if he sold it
13 for less than \$450,000?

14 A. That's correct. That, we never talked about.
15 But I also know that he didn't sell it for less.

16 Q. My only question is, when you made the deal
17 for \$450,000 and you told him that you'd do it if he
18 gave you \$50,000 on a sale within two years, you never
19 talked about what would happen if he sold it for less
20 than \$450,000?

21 A. No, because he should have talked to me
22 because I could have got that money. It's no different
23 than I could have in the beginning.

24 Q. Let me ask you this question: You'd agree

MELVIN LIPMAN 617-227-3985

52

1 with me that 450 plus 50 is 500?

2 A. Yes.

3 Q. Did you and he ever talk about what would
4 happen if he sold it for less than \$500,000?

5 A. No, we didn't.

6 Q. Did you and he ever talk about when that
7 two-year period was supposed to begin running?

8 A. Should be from the date of purchase, which is
9 approximately December 17th, in that area.

10 Q. The date of the title passing?

11 A. Yes.

12 Q. Not the date of the Purchase and Sale
13 Agreement?

14 A. Right.

15 Q. And when was it your understanding that the
16 two-year period would end?

17 A. Two years from that date.

18 Q. Well, would the two years run from the date
19 of the Purchase and Sale Agreement for a new buyer or
20 the date that the new buyer actually took title?

21 A. I would say from the time he found another
22 buyer.

23 Q. But you and he never talked about it?

24 A. No, we didn't. Never thought it would be

MELVIN LIPMAN 617-227-3985

61

1 Q. Is he working?

2 A. He works for the school department, but he

3 only makes eight something an hour.

4 Q. Does he have any medical problems?

5 A. Yes, he does.

6 Q. What are those?

7 A. He's going in for a gallbladder operation in

8 January, and he's had a heart condition just recently.

9 Q. How old is he?

10 A. He'd be 61.

11 Q. And he's presently working; is that right?

12 A. School department, yes, janitorial services.

13 Q. So are you saying that William was actually a

14 witness to the conversation where you told your son you

15 wanted \$50,000 if the property --

16 A. Yes, he was.

17 Q. -- was sold in two years?

18 A. Yes, he was.

19 Q. Was anybody a witness to the conversation

20 relative to the \$30,000 loan?

21 A. I don't believe so, no.

22 Q. Okay. Let me ask you about that

23 conversation, sir. Did you say that the conversation

24 about the \$30,000 occurred shortly before James took

MELVIN LIPMAN 617-227-3985

62

1 title to the property?

2 A. Correct.

3 Q. And when was -- According to your

4 conversation, did you put any time frame on the

5 repayment of the loan?

6 A. The time frame was that him and his friend

7 Dave were doing over a house that they were -- that they

8 purchased in Dave's name. They were fixing it up and

9 selling it for a resale. And when they sold the house,

10 he was going to pay me.

11 Q. What's Dave's last name?

12 A. I have it at home. I don't have it with me.

13 I might think of it as this goes on. If I do, I'll jump

14 in and tell you.

15 Q. And where is that house that you're talking

16 about?

17 A. I don't know. Newton is all I know.

18 Q. Do you know whether or not the house has, in

19 fact, been sold?

20 A. No, I don't.

21 Q. Now, you made some reference to the fact that

22 John and/or Jim, in trying to get you to sell the house

23 for less than 650, made some reference to an

24 inheritance. Do you recall that?

MELVIN LIPMAN 617-227-3985

63

1 A. Yes.

2 Q. Can you tell me more specifically what it was

3 that they said?

4 A. Yes. It started that John come to me and

5 said, Dad, James has always wanted this house all his

6 life. Can you help him? Is there any way that you can,

7 you know, give him inheritance money towards it or

8 anything of that nature?

9 I said, Let me think about it. So, I mean,

10 that was probably a month or so before. I did think

11 about it, and my decision was that I would take off

12 \$200,000, which made it very hard for me because now I

13 had to figure out how, in later life, I was going to be

14 able to do the same for John, because if you do for one,

15 you have to do for the other.

16 Q. Do you recall, sir, that the day before your

17 wife passed away there was some conversation that you

18 and your two sons and your wife were present at where

19 there was a discussion about the 401(k)?

20 A. There was never a discussion in front of my

21 wife about the 401(k). Number 2, there was no

22 recollection, in my mind, whatsoever that she was close

23 to death at that time. So there was no talk of that.

24 She called me up at work on a Thursday and

MELVIN LIPMAN 617-227-3985

64

1 said that she was in a lot of pain and she wanted to go

2 into the hospital. I'll probably have to pay for the

3 ambulance because the doctor wasn't recommending it. It

4 was her own decision. There was no talk of death.

5 Q. That was on a Thursday. How much earlier

6 was -- How much prior in time was that to her passing?

7 A. Saturday.

8 Q. All right. There was no discussion --

9 A. None.

10 Q. -- about the 401(k)?

11 A. No.

12 Q. Was there any discussion about how the 401(k)

13 was to be distributed, at any time, between you and your

14 wife?

15 A. Yeah. Just the way it's on there. My name.

16 That I would know what to do when I did it.

17 Q. And when you say that you would know what to

18 do, she said that to you?

19 A. Yes.

20 Q. And when was that said to you?

21 A. Quite a while before her death. It was

22 nowhere close, because I told you I didn't know she was

23 close.

24 Q. And when she said to you, You would know what

MELVIN LIPMAN 617-227-3985

1 A. No. If he sold it, he owed me because I
2 could have made the profit.
3 Q. But that was in your mind?
4 A. Yes.
5 Q. Okay. Now, the next question is, sir, do you
6 have any information, either through any documents or
7 from anyone you've spoken to -- do you have any
8 information that your son James Dowd made any profit on
9 the sale at all?
10 A. No.
11 Q. Have you ever -- And do you know that the
12 property has been sold to Mr. Steven Devane?
13 A. Yes, I do.
14 Q. And have you ever seen the deed?
15 A. No.
16 Q. Do you know how much the deed reflects the
17 property was sold for?
18 A. No, but I also know that Steven was looking
19 for a second mortgage. So I do know that it won't all
20 be on one deed.
21 MR. LOVINS: Mark this as the next
22 exhibit.
23 (Exhibit No. 12 marked for
24 identification.)

MELVIN LIPMAN 617-227-3985

1 What do you have to say about that?
2 A. I've got to say the whole thing is false.
3 Carol and I never talked about the boys having it. It
4 was in my name because she felt it should be in my name.
5 She only got to save that money because she lived under
6 my roof, and I'm the one that had to put that money
7 away. James would like to get his hands on some more
8 money from me. The \$200,000, he was too greedy to
9 accept that as enough, so he had to steal the 80. And
10 he'd still go after anything else he could. He's a
11 greedy slob.
12 Q. Now, Mr. Dowd, why do you say that your
13 former wife lived under your roof? Wasn't that a house
14 that you and she owned together?
15 A. Yeah. She made ten dollars an hour. I made
16 thirty dollars an hour.
17 Q. All right. Do you think, when you say that
18 she was living under your roof, that you were doing her
19 some kind of favor?
20 A. No. We're doing each other a favor.
21 Q. Okay. So I'm just curious as to why you said
22 that she was living under your --
23 A. Just that I paid all the bills, all the bills
24 for thirty-eight years. I wrote every check that was

MELVIN LIPMAN 617-227-3985

1 BY MR. LOVINS:
2 Q. Placing before you now, Mr. Dowd, what has
3 been marked as Exhibit Number 12, do you see that that
4 is titled Answer Counterclaim and Jury Demand?
5 A. (Witness reviewing document.) Yes.
6 Q. And would you turn to the third page -- the
7 pages are not numbered, but it is the third page -- and
8 you see about a quarter of the way down the title
9 Counterclaim?
10 A. Yes.
11 Q. And do you understand that this is a claim
12 that your son is making against you?
13 A. I understand.
14 Q. Okay. Would you look, sir, at Paragraph
15 Number 5 --
16 A. Um-huh.
17 Q. -- which reads as follows, and tell me if
18 I've read it correctly: Before her death -- referring
19 to Carol Ann Dowd -- Carol expressed her wish that her
20 two sons would receive the proceeds of her 401(k) plan,
21 approximately 141,000, in equal shares. George agreed
22 to see to this distribution. And on reliance of that
23 promise, Carol did not formally alter the designated
24 beneficiaries of the 401(k) plan.

MELVIN LIPMAN 617-227-3985

1 ever sent out. I bought the cars. I paid the car
2 insurance. I paid everything. Her money that she
3 made -- Her ten dollars an hour was to spend any way
4 that she wanted. And when the boys were younger, she
5 had put them through a parochial school with it. But
6 she never turned in her checks to our household money.
7 I paid for everything.
8 Q. Did you have a pension or retirement fund,
9 sir?
10 A. No, I don't.
11 Q. But at the end of the day, she ended up with
12 \$140,000 retirement fund, didn't she?
13 A. Yeah. After 21 years, yeah.
14 Q. And what kind of work did you do?
15 A. Mechanic.
16 Q. And were you --
17 A. Mainly, I was a supervisor.
18 Q. A what?
19 A. Supervisor.
20 Q. For whom?
21 A. Butler Aviation, I was their maintenance
22 manager. Railroad Equipment Rental, I was their
23 maintenance manager. Coca-Cola Bottling Company, I was
24 their maintenance manager. I was in management most of

MELVIN LIPMAN 617-227-3985